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Subject
LS-3047
314

Chief, Medical Staff

4 March 1953

Office of General Counsel

Reversal of Medical Decision by DCI

- REFERENCE: a. Memorandum from ADD/A to DC/MS, dated February 17, 1953,
same subject
- b. Memorandum from DC/MS to DE/A, dated February 11, 1953,
same subject

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1. You have submitted the references for our opinion on the effect of a waiver by the DCI of a medical disqualification upon the liability of this Agency or the Government for a particular employee's condition.

2. Agency Regulations [REDACTED] B (7) provides:

"All examinations are subject to Agency Medical Standards. Waivers of Agency Medical Standards may be granted by the Chief, Medical Staff. Waivers of medical disqualification for service in the Agency will be granted only by the Director and should be submitted through the Chief, Medical Staff and the Deputy Director (Administration)."

This regulation has evidently been applied to new assignments within the Agency as well as to the original entrance upon duty.

3. The objectives in the prescription of Agency Medical Standards are numerous. The desirability of ensuring the physical qualifications of personnel for assigned duties is self-evident, both from the standpoint of the assurance given the Agency that the individual is capable of performance, and the assurance given the individual of ascertainable limitations upon his physical abilities. As a corollary, there would appear to be the administrative conclusion from the assignment of physically disqualified personnel to responsibilities which they are not equipped to handle, with the resultant minimizing of the number of "line-of-duty" disability claims.

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4. Regulation [REDACTED] B (7) evidences an administrative policy to abide by a determination of medical disqualification in every case except where the Director himself sees fit to override the medical action, presumably on grounds of operational need. This requirement of non-delegable action by the Director gives recognition to the fruitlessness of standards, professionally established, where there is no clear-cut restriction upon the number of persons, lacking technical skill, who are entitled to grant waivers of such standards. The prescribed procedure for obtaining waivers by the DCI is designed to insure that the DCI has the full benefit of competent medical advice before acting.

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25X1A 5. Viewed in this light, it becomes apparent that a waiver of medical disqualification by the DCI cannot enlarge upon the liability of the Agency or the Government to an individual where that liability arises on a showing of disability incurred in line of duty. With respect to [REDACTED] situation the determination of medical disqualification was an administrative bar to his assignment overseas for longer than the designated period. A waiver by the Director would operate only to remove this administrative obstacle. [REDACTED] cannot thereby be deprived of a right to compensation for original disability incurred in performance of his employment or an aggravation of his pre-existing impairment, where the necessary causal relation can be demonstrated.

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25X1A 6. In accordance with the foregoing, it is our opinion that a waiver by the DCI in [REDACTED] case would have the effect only of perfecting the administrative record. It cannot enlarge or diminish potential Agency or Government liability.

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[REDACTED]

OOC/GHK:apf

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